Supreme Court, U.S.
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No. 79-6626

In the Supreme Court of the United States

October Term, 1979

JAMES A. WILLIAMS,
Petitioner,

vs.

STATE OF MISSISSIPPI,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the District Court is unreported. The opinion of the Court of Appeals is reported at 608 F.2d 1021. The petition for rehearing was denied February 14, 1980.

QUESTION PRESENTED

Whether the remedy of removal is available to the petitioner pursuant to 28 U.S.C. § 1443(1), or precluded by the clear pronouncements of decisional authority of the Court.

STATEMENT OF THE CASE

The statement of this case and its facts are brief and concise. The record of the District Court and that of the Court of Appeals contains nothing more than those facts alleged in the petition for removal. The facts of this case are clearly reflected in the opinion of the Court of Appeals, *Williams v. State of Mississippi*, 608 F.2d 1021-1022 (5th Cir. 1979).

ARGUMENT

The Remedy of Removal Is Impermissible Because Prior Decisions of This Court Foreclose Any Such Relief

James Williams was indicted on four (4) separate counts of possession of controlled substances pursuant to § 41-29-139(a)(2), *Miss. Code of 1972*. There were four (4) indictments in two (2) county jurisdictions whereupon at various intervals very shortly before the trial date, four (4) separate Petitions to Remove were filed, in groups of two (2), and simultaneously.

The initial request was that the Federal Court assume jurisdiction over the criminal matters then in issue in the Circuit Courts of Kemper and Lauderdale County, Mississippi. In support thereof, the petitioner would have this Court believe that the mere existence of criminal charges against him, and bare unsupported allegations of racial discrimination in Grand Jury selection and harassment are sufficient bases for the remedy of removal. This is just not so.

The Civil Rights Removal Act, 28 U.S.C. § 1443(1) states:

"§ 1443. Civil Rights Cases.

Any of the following civil actions or criminal prosecutions, commenced in a State Court may be removed by the defendant to the District Court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the Courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or if all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

The landmark decisions in the criminal removal area are *State of Georgia v. Rachel,* 1966, 384 U.S. 780, 86 S. Ct. 1783, 16 L. Ed. 2d 925; *City of Greenwood v. Peacock,* 1966, 384 U.S. 808, 86 S. Ct. 1800, 16 L. Ed. 2d 944; and *Johnson v. Mississippi,* 1975, 421 U.S. 213, 95 S. Ct. 1591, 44 L. Ed. 2d 121. Beyond question, the principles reflected in these opinions foreclose any removal herein. The applicable precepts of each case are as follows:

(a) *Georgia v. Rachel, supra*:

When speaking to the question of removal, of paramount issue there as here, the Court, in its interpretation of the federal statute, states as its directive:

"Section 1443(1) entitles the defendants to remove these prosecutions to the federal court only if they meet both requirements of that subsection. They must show both that the right upon which they rely is a 'right under any law providing for . . . equal

civil rights', and that they are 'denied or cannot enforce' that right in the Courts of Georgia." 16 L. Ed. 2d at 931.

(b) *City of Greenwood v. Peacock, supra*:

The essential doctrine announced by the Court in the companion to *Rachel* was also a limitation on removal:

> "It is *not* enough to support removal under § 1443(1) to allege or show that the defendant's federal equal civil rights have been illegally and corruptly denied by state administrative officials in advance of trial, that the charges against the defendant are false, or that the defendant is unable to obtain a fair trial in a particular state court. The motives of the officers bringing the charges may be corrupt, but that does not show that the state trial court will find the defendant guilty if he is innocent, or that in any other manner the defendant will be 'denied or cannot enforce in the courts' of the State any right under a federal law providing for equal civil rights. The civil rights removal statute does not require and does not permit the judges of the federal courts to put their brethren of the state judiciary on trial. Under § 1443 (1), the vindication of the defendant's federal rights is left to the state courts except in the rare situations where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court. *Georgia v. Rachel*, 384 U.S. 780, 16 L. Ed. 2d 925, 86 S. Ct. 1783; *Strauder v. West Virginia*, 100 U.S. 303, 25 L. Ed. 664." *City of Greenwood v. Peacock*, 16 L. Ed. 2d 944, 956, 957. (Emphasis in original).

(c) *Johnson v. Mississippi, supra*:

The *Peacock* prohibition against removing an action merely because a criminal charge is pending was recently reaffirmed in *Johnson*:

> "Claims that prosecution and conviction will violate rights under constitutional or statutory provisions of general applicability or under statutes not protecting against racial discrimination, will not suffice. That a removal petitioner will be denied due process of law because the criminal law under which he is being prosecuted is allegedly vague or that the prosecution is allegedly a sham, corrupt, or without evidentiary basis, does not, standing alone, satisfy the requirements of § 1443(1). *City of Greenwood v. Peacock*, 384 U.S. at 825, 16 L. Ed. 2d 944, 86 S. Ct. 1800." 44 L. Ed. 2d 121, 128.

As succinctly held by the Court of Appeals, this petitioner cannot satisfy the second testimony of *Johnson, Rachel,* and *Peacock.* The petitioner has acknowledged that Mississippi law clearly provides that no one can be excluded from jury sentence because of race. § 13-5-2, *Mississippi Code of 1972.* The State of Mississippi, by and through its courts, protect the right to a grand jury selected without regard to race. *Bass v. Mississippi,* 381 F.2d 692, 695.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Ed Davis Noble, Jr, an Assistant Attorney General for the State of Mississippi and one of the attorneys for the Respondent in the above and foregoing Brief of Respondent in Opposition to Petition for Writ of Certiorari, do hereby certify that I have this day mailed via United States Postal Service, first class postage prepaid, a true and correct copy of the aforementioned Brief to the Petitioner's attorney of record:

Roy Pitts, Esq.
P. O. Box 1606
Meridian, Mississippi 39301

This, the 4th day of June, 1980.

ED DAVIS NOBLE, JR.